IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE SIDE

WRIT PETITION NO.8133 OF 2003

Office Notes, Office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders.	Court's or Judge's orders

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Mr.N.V.Bandiwadekar, for the Petitioner
Mrs.S.S.Bhende, A.G.P. for the Respondent No.1 and 2.
Mr. R.S. Apte with Mr. A.A. Garge, for Respondent No.2.
Mr. M.V. Limaye, for Respondent No.5.

CORAM : F.I. REBELLO & S.P. KUKDAY,JJ.
DATED : 16TH FEBRUARY, 2005

P.C.

. Rule. Heard forthwith.

2. The petitioner has approached this Court pursuant to the decision of the Management as communicated by the Head Master by communication dated 10th November, 2003 to treat the petitioner as surplus from 10th November, 2003. It is the case of the petitioner that the respondents could not have unilaterally treated the petitioner as surplus without getting the approval from the Respondent No.2. In fact it is sought to be pointed out that this is being done with a view to protect the respondent No.5. Further relief which is sought for is that the respondents management has failed to pay to

the petitioner the salary of the post. The scale prescribed is Rs.5500-9000/- and has not been paid salary for the initial two months of July and August, 1999 and from September, to June, 2000 she has been paid only salary of Rs.1,000/- per month. Hence relief in terms of prayer clause (f) has also been sought.

3. On the other hand on behalf of the Respondent management it is sought to be pointed out that even before the Respondents could move the Education Officer for getting the petitioner as surplus the petitioner moved this Court and in these circumstances they could not move the Education Officer for approval for treating the petitioner as surplus. In so far as the contention that the salary has not been paid has not been denied in the affidavit filed by Shri Milind Bhalchandra Rede, Secretary of the Respondent No.3 dated 17th July, 2004.

4. Having heard learned Counsel, we are of the opinion that the Management before treating the teaching as surplus has to get approval for that action as ultimately the petitioner was appointed against a recognised and aided post. It is only on

Respondent No.2 recognising the petitioner as surplus then the consequences will have to follow namely getting the petitioner on the pay role of the Respondent Management for the purpose of drawing salary and till such time as the petitioner can be absorbed in another School.

5. Considering the above we propose to pass the following directions :-

(i) By order of this Court dated November 27, 2003 there was a direction that if the services of the petitioner are not terminated they will not be terminated and the petitioner would be paid salary accordingly. That interim order will continue.

(ii). The Respondent No.2 on the representation moved by the management to decide whether the petitioner is holding the surplus post.

(iii) If the Respondent No.2 comes to the conclusion after hearing both the petitioner and the management that the post is surplus then to issue orders directing the petitioner's salary to be drawn from the School till such time the petitioner

can be absorbed in any other recognised school.

(iv) Considering what we have set aside the impugned order will have to be read in terms of the directions issued by this Court.

(v) Petition will also have to be made absolute in terms of prayer clause (j). Rule made absolute accordingly. No order as to costs.

(vi) In the first instance the respondent management to make payment of all arrears within four months from today. If the respondent management submits the pay bill for grant for the post of petitioner for the period for which the salary was not paid it is for the respondent No.2 to consider the same and pass appropriate orders.

Rule made absolute accordingly.

(F.I. REBELLO, J.)

(S.P. KUKDAY, J.)